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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/938,307	08/23/2001	. Veijo T. Suorsa	9345.17121-CIP B	1991
	7590 02/01/2007 HOLZ & MANION, S.C.		EXAMINER	
POST OFFICE	BOX 26618		SMITH, RUTH S	
MILWAUKEE, WI 53226			ART UNIT	PAPER NUMBER
			3737	
SHORTENED STATUTOR	Y PERIOD OF RESPONSE	MAIL DATE	DELÎVERY MODE	
3 MONTHS		02/01/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<ul> <li>1) ⊠ Responsive to communication(s) filed on <u>09 November 2006</u>.</li> <li>2a) ☐ This action is <b>FINAL</b>. 2b) ⊠ This action is non-final.</li> <li>3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under <i>Ex parte Quayle</i>, 1935 C.D. 11, 453 O.G. 213.</li> </ul>		Application No.	Applicant(s)				
## Examiner Ruth S. Smith 3737  ## Art Unit ## Communication appears on the cover sheet with the correspondence address  ## Period for Reply  A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.  **Exercision of time may be available under the provisions of 37 CFR 1.736(b), in to event, however, may a reply be limitly filled to the intermental or the provision of 37 CFR 1.736(b), in to event, however, may a reply be limitly filled to reply a specified sow, the maximum factor period will appear and will explain to neally which the price of the reply will by stantion predow all appears and will explain the nonemunication on the provision of the provision of the reply will by the fill of the provision of the reply will by stantion, cause the application to secone ABARDONED (39 U.S. 5, 133) Any reply received by the 10ths legislation predow all applies and will be communication, even't timely filed. They reduce any stantion provision of the practice under Exparte Quayle, 1935 C.D. 11, 453 O.G. 213.  ### Disposition of Claims  ### Application of the above claim(s)	·	09/938,307	SUORSA ET AL.				
- The MAILING DATE of this communication appears on the cover sheet with the correspondence address — Period for Repty  A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.  Extendence for them by to a validate under the provisions of 3 CFR 1.136(), no event, however, may any be the findly filled she for the communication. In overtice the provision of the provision of the communication of the communication of the communication. Failure to elegist which has not contained period for repty with by statute, cause the application to become ABANDORED (50 st. 2, 5 130). Any reply recovered by the Office later than the members after the making date of this communication, so the provision of Claims  4) □ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213.  Disposition of Claims  4) □ Claim(s) 1-10,12,13 and 18-27 is/are pending in the application.  4a) Of the above claim(s) is/are allowed.  6) □ Claim(s) is/are objected to.  8) □ The specification is objected to by the Examiner.  Application Papers  9) □ The drawing(s) filed on is/are: a) □ accepted or b) □ objected to by the Examiner.  Application Papers  9) □ The drawing(s) filed on is/are: a) □ accepted or b) □ objected to by the Examiner.  Application Papers  9) □ The drawing(s) filed on is/are: a) □ accepted or b) □ objected to by the Examiner.  Application Papers  9) □ The drawing(s) filed on is/are: a) □ accepted or b) □ objected to by the Examiner.  Application Papers  9) □ The drawing(s) filed on is/are: a) □ accepted or b) □ objected to by the Examiner.  Application Papers  9) □ The drawing(s) filed on is/are: a) □ accept	Office Action Summary	Examiner	Art Unit				
A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.  Exercises of time may be available under the provisions of 37 CFR 1.30(a). In or event, however, may a regip be timely filled.  Exercises of time may be available under the provisions of 37 CFR 1.30(a). In or event, however, may a regip be timely filled.  Exercises of time may be available under the provisions of 37 CFR 1.30(a). In or event, however, may a regip be timely filled.  If IN Operation to regip is specified above, the maximum statutory period was pay and well expire XX (b) MONTHS from the mailing date of this communication.  Failure to reply within the set of extended period for reply will, by statute, cause the application to become ANAHODINED C35 U.S.C. § 1333, Any traphy receded by the Office time the three horizons and the communication, even if timely filled, may reduce any event term adjustment. Since 97 CFR 1.74(b).  Status  1) Responsive to communication(s) filled on 09 November 2006.  2a) This action is FINAL.  2b) This action is non-final.  3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Exparte Quayle, 1935 C.D. 11, 453 O.G. 213.  Disposition of Claims  4) Claim(s) 1-10,12,13 and 18-27 is/are pending in the application.  4a) Of the above claim(s) is/are allowed.  Claim(s) 1-10,12,13 and 18-27 is/are rejected.  7) Claim(s) is/are allowed.  Claim(s) is/are objected to.  B) Claim(s) is/are objected to.  Claim(s) is/are objected to.  Claim(s) is/are objected to.  Claim(s) fill on is/are is/are rejected.  7) Claim(s) is/are objected to.  Application Papers  9) The specification is objected to by the Examiner.  10) The drawing(s) filled on is/are: a) accepted or b) objected to by the Examiner.  Application Papers  10) All b) Some of the contribution of the contribution of the drawing(s) be held in abeyance. See 37 CFR 1.121(d).  11)		Ruth S. Smith	3737				
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WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.  Extensions of time may be available under the proxision of 3 of FR 1-13(6). In ne event, hower, may a reply be timely filed after 5x (6) MONTHS from the mailing date of this communication.  If ND period or ship is the communication of the communication of the communication of the provided of the communication of the provided of the provided of the provided of the provided of the communication of the provided of the communication of the provided of the provided of the communication of the provided of the communication of the provided of the communication of the provided of the provided of the communication of the provided of th		DEDI V IS SET TO EXDIRE 3 M	MONTH(S) OR THIRTY (30) DAYS				
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## **Drawings**

The drawings were received on November 9, 2006. These drawings are acceptable.

## Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-10,12-13 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claim 1 sets forth that the flexible material contacts and conforms to the skin region thereby including the patient as part of the claimed invention. In claim 5, the assembly is set forth as being worn on the thorax thereby also including the patient as part of the claimed invention. The inclusion of the patient as part of the claimed invention renders the claims non-statutory.

## **Double Patenting**

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

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Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-10,12,13,18-27 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-10,15-23 of copending Application No. 09/935,908. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims in application no. '908 are directed to an applicator which would have been obvious to use in a system for applying the signals to operate the applicator. The applicators set forth in both applications include substantially the same structure.

This is a <u>provisional</u> obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 1-10,12,13,18-27 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 5-8,13,18-20,22-23 of copending Application No. 10/202,494. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims in application no. '494 are directed to an applicator which would have been obvious to use in a system for applying the signals to operate the applicator. The applicators set forth in both applications include substantially the same structure. The use of a hydrophilic material to shed the air bubbles as well as the materials used to support the acoustic stack are old and well known in the art based upon their suitability for intended use and would therefore have been obvious.

This is a <u>provisional</u> obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

## Response to Arguments

Applicant's arguments with respect to claims 1-10,12,13,18-27 have been considered but are moot in view of the new ground(s) of rejection.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ruth S. Smith whose telephone number is 571-272-4745. The examiner can normally be reached on M-F 7:30 AM-4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Casler can be reached on 571-272-4956. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Ruth S. Smith Primary Examiner Art Unit 3737

RSS